IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

Mangu Singh Vs. The Director General of Police, Raj. Jaipur & Ors.

D.B. CIVIL SPECIAL APPEAL (WRIT) NO.195/2006
against the judgment dated 6.3.2006 passed in S.B. Civil Writ Petition No.1225/2006.

Date of judgment : 12th April, 2006

PRESENT

HON'BLE MR.JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE R.P. VYAS

Mr. H.S. Sindhu for the appellant.

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BY THE COURT:-(PER HON'BLE RAJESH BALIA J.)

We have heard learned counsel for the appellant.

The appellant, who is resident of Bikaner and is a Sub-Inspector of Police, was transferred by order dated 19.11.2005 from the field post of Jamsar to Police Line, Bikaner vide order dated 19.11.2005. The writ petition filed by the petitioner challenging the transfer order has been dismissed by learned Single Judge.

It is stated by the learned counsel for the appellant that learned Single Judge has referred to a wrong order in his judgment while dismissing the writ petition. The appellant's contention is that he has been singly transferred from the field post Jamsar to Police Line, Bikaner because of the nearness of his date of retirement and his transfer at the verge of retirement suffers from malafide.

The learned counsel for the petitioner relies on a decision of this Court in the case of Dr. (Smt.) Puspa Mehta Vs. Rajasthan Civil Services Appellate Tribunal & Ors. Reported in **2001(1) RLR 399.**

Having perused the judgment of Dr. Puspa Mehta's case, we do not find any support for such straight jacket formula devised by the Court. It was a case in which one Dr. Shanta Dubey, who was transferred in the Department of Micro-biology at Udaipur and was on the verge of retirement was transferred to Kota vice Dr. Puspha Mehta who was brought at Udaipur. The transfer order was challenged before the Rajasthan Civil Services Appellate Tribunal, where appeal lies against the order of transfer. The Tribunal found that the

policy of the Government has been that ordinarily, an employee at the verge of retirement, should not be disturbed. It also found that Dr. Shanta Dubey was transferred from Udaipur to Kota only to accommodate Dr. Puspha Mehta. The other facts which were noticed by the Court were that said Dr. Shanta Dubey was due to retire in January 2001; she herself was suffering from cancer; her husband expired on 13.2.1998 and her younger son is studying at Udaipur.

Keeping these circumstances in view coupled with the policy of the State and finding that the person who was transferred vice the said Shanta Dubey had long period of service, the Court inferred in these circumstances that the transfer of the incumbent from Udaipur to Kota was a malafide exercise of power. The facts of Dr. Puspa Mehta's case are quite distinguishable from the present case. There are no such circumstances which show malafide on the part of the respondents in transferring the petitioner from Jamsar to Police Line, Bikaner while considering his nearness of retirement. It is not in dispute that the incumbent is permanent resident of Bikaner only and not of Jamsar.

It may also be noticed that in case of Smt. Puspha Mehta (supra) the Division Bench said that ordinarily the matters of transfer are not interfered except in compelling circumstances. In the present case there is no malafide in transferring the petitioner from Jamsar to Bikaner his hometown considering nearness of his retirement. Nor any such compelling circumstances are made out, as were present in the Pushpa Mehta's case, which may necessitate interference in transfer order, which otherwise does not affect the petitioner adversely in any manner.

The appeal, therefore, fails and is hereby dismissed.

[R.P. VYAS], J. [RAJESH BALIA], J.

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